

UNITED STATES DISTRICT COURT

for the

District of Montana

United States of America

v.

Tomas Alvarado

Date of Original Judgment: 10/22/2013

Date of Previous Amended Judgment:

(Use Date of Last Amended Judgment if Any)

Case No: CR 13-26-BLG-SPW

USM No: 12329-046

Defendant's Attorney

ORDER REGARDING MOTION FOR SENTENCE REDUCTION
PURSUANT TO 18 U.S.C. § 3582(c)(2)

Upon motion of ☒ the defendant ☐ the Director of the Bureau of Prisons ☐ the court under 18 U.S.C. § 3582(c)(2) for a reduction in the term of imprisonment imposed based on a guideline sentencing range that has subsequently been lowered and made retroactive by the United States Sentencing Commission pursuant to 28 U.S.C. § 994(u), and having considered such motion, and taking into account the policy statement set forth at USSG §1B1.10 and the sentencing factors set forth in 18 U.S.C. § 3553(a), to the extent that they are applicable,

IT IS ORDERED that the motion is:

☒ DENIED. ☐ GRANTED and the defendant's previously imposed sentence of imprisonment (as reflected in the last judgment issued) of _____ months is reduced to _____.
(See Page 2 for additional parts. Complete Parts I and II of Page 2 when motion is granted)

Defendant seeks a sentence reduction under the retroactive application to the criminal history rules in Parts A and B, subpart 1 of Amendment 821 to the United States Sentencing Guidelines. (See Doc. 354.) Part A limits the overall criminal history impact of "status points" for offenders who committed the instant offense while under a criminal justice sentence. Part B, subpart 1 provides a two-level offense level decrease for offenders who did not receive any criminal history points under Chapter Four and whose instant offense did not involve specific aggravating factors. See USSG Ret. App. A & B, Sub. 1 Amendment 821 "Reasons for Amendment" (Nov. 1, 2023). "A defendant is ineligible for a sentence reduction if the relevant amendment does not have the effect of lowering the defendant's applicable guideline range." *United States v. Mercado-Moreno*, 869 F.3d 942, 949 (9th Cir. 2017); USSG §1B1.10(a)(2)(B) (2023).

Defendant had a total criminal history score of 19 after receiving two "status points" for committing the instant offense while on probation. (PSR ¶¶ 51–52.) However, because Criminal History Category VI includes all defendants with 13 or more total Criminal History Points, Defendant's Criminal History Category would be VI, even without the additional status points. See USSG Ch.5, Pt.A, Sentencing Table. Therefore, Defendant is ineligible for a sentence reduction because Amendment 821 "does not have the effect of lowering the defendant's applicable guideline range." *Mercado-Moreno*, 869 F.3d at 949. His motion is denied.

Except as otherwise provided, all provisions of the judgment dated 10/22/2013 shall remain in effect.

IT IS SO ORDERED.

Order Date: 01/26/2024



Judge's signature

Effective Date: _____
(if different from order date)

Susan P. Watters, U.S. District Judge

Printed name and title